



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

COPY MAILED

JAN 22 2008

In re Application of	:	OFFICE OF PETITIONS
Julie Rae Kowald	:	
Application No. 09/730,573	:	DECISION ON PETITION
Filed: December 7, 2000	:	UNDER 37 C.F.R. § 1.181
Attorney Docket No.: 169.1918	:	
Title: VISUAL LANGUAGE	:	
CLASSIFICATION SYSTEM	:	

This is a decision on the petition filed on July 24, 2007, pursuant to 37 C.F.R. § 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed July 27, 2006, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 28, 2006. A notice of abandonment was mailed on April 19, 2007.

RELEVANT PORTION OF THE M.P.E.P..

Section 503 of the M.P.E.P., entitled "Application Number and Filing Receipt," sets forth, *in pertinent part*:

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO

will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as prima facie evidence of receipt of that item in the USPTO.

ANALYSIS

With the present petition, Petitioner has asserted that a response was submitted to the Office on November 27, 2006. Petitioner has submitted a copy of this submission, along with a postcard receipt that establishes that both a "Response to Official Action, dated July 27, 2006" and a "Petition under 37 CFR 1.136 and Check for \$120.00" were received in the Office on December 1, 2006.

Moreover, Petitioner has further included a copy of this submission, and it is noted that it contains a certificate of mailing dated November 27, 2006.

Additionally, it is noted that this same response has been located in the electronic file; therefore, it is clear that this response was received on December 1, 2006. Furthermore, Office records confirm that the fee that is associated with the filing of a request for a one-month extension of time was received in the Office on December 1, 2006.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a response was timely submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is GRANTED. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the response to the non-final Office action that was received on December 1, 2006 can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225¹. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanowski/
Paul Shanowski
Senior Attorney
Office of Petitions

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).